IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

OP.No. 33659 of 2002(F)

PETITIONER:

P.M.LAKSHMANAN, S/O. KUNHAMBU,
AGED 71, RETIRED COLLEGE PRINCIPAL,
PARASSINIKADAVU MADAPPURA,
PARASSINIKADAVU P.O., KANNUR DISTRICT.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)

RESPONDENTS:
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1. COMMISIONER & SECRETARY, FINANCE DEPARTMENT, GOVERNMENT OF KERALA, GOVT. SECRETARIAT,THIRUVANANTHAPURAM.

2. COMMISSIONER OF COLLEGIATE EDUCATION, (D) DEPARTMENT, GOVERN MENT OF KERALA, GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

3. DIRECTOR OF COLLEGIATE EDUCTION, KERALA, THIRUVANANTHAPURAM.

4. ACCOUNTANT GENERAL, KERALA, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. T.B. REMANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO. 56859/2002 IN OP NO. 33659/2002 F.

DISMISSED

05/09/2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE MEMO DT. 19/12/62 BY THE DIRECTOR, PRD TO THE PETITIONER.

EXT.P2. COPY OF THE MEMO DT. 27/2/65 BY THE DIRECTOR, PRD TO THE PETITIONER.

EXT.P3. COPY OF THE LETTER DT. 14/09/90 by the R3 TO THE R4.

EXT.P4. COPY OF THE LETTER DT. 1/11/90 BY THE R4.

EXT.P5. COPY OF THE REPRESENTATION DT. 26/12/91 BY THE PETITIONER BEFORE THE GOVT.

EXT.P6. COPY OF THE REPLY DT. 27/2/92 RECEIVED BY THE PETITIONER FROM THE R1.

EXT.P7. COPY OF THE REPRESENTATION DT. 15/4/92 BY THE PETITIONER BEFORE THE R1.

EXT.P8. COPY OF THE REPLY DT. 14/1/93 RECEIVED BY THE PETITIONER FROM THE R1.

EXT.P9. COPY OF THE JUDGMENT OF THIS COURT ON 3/4/96 IN OP NO. 11467/93.

EXT.P10. COPY OF THE JUDGMENT OF THIS COURT DATED 17/12/2001 IN WA NO. 1580/96.

EXT.P12. COPY OF THE ORDER DT. 5/6/02 BY THE GOVT.

RESPONDENT'S EXHIBITS NIL.

True copy

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THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.33659 OF 2002

Dated this the 5th day of September, 2007

JUDGMENT

Petitioner was an aided school teacher from 17.7.1956 to 3.6.1963 when he resigned that appointment to take up the appointment as a Feature Writer in the Public Relations Department on contract basis. He worked in such capacity from 21.6.1963 to 28.2.1965. Thereafter he worked as a College Lecturer from 1.7.1966 and retired on 31.3.1987.

2. The short issue that arises for decision is as to whether the periods spent by him as an aided school teacher and later as a contract appointee-Feature Writer in the Public Relations Department are entitled to be reckoned for determining the total length of pensionable service in terms of the Kerala Service Rules.

3. The contention in opposition were initially that the resignation from the aided school service was to take up a non-

pensionable employment and therefore, such resignation would result in forfeiture of past service in terms of Rule 21 in Part III K.S.R. In the counter affidavit, it has been further attempted to be shown that during his tenure as an aided school teacher, the petitioner proceeded on long leave to obtain Post Graduate qualification, which was unnecessary for an aided school teacher and therefore, that is also a ground which would result in brake of service.

4. Rule 29 (b) provides that resignation of appointment to take up another appointment, the service in which counts, is not resignation from public service, while Rule 29 (a) provides that resignation of the public service entails forfeiture of past service. Therefore, if a resignation is to take up another appointment, the service in which counts, such resignation would not result in forfeiture of past service. In its effect, clause (b) of Rule 29 in Part III K.S.R. comes as a proviso to clause (a) of that Rule.

5. The contract appointment of the petitioner as a Feature Writer in the Public Relations Department is obviously not service which counts for pension. Hence, the resignation of the petitioner of his appointment as an aided school teacher cannot be treated as a resignation for the purpose of taking up another appointment, the service in which counts. Therefore, apart from the fact that his contract service as a Feature Writer in the Public Relations Department is not pensionable, his resignation from the aided school to take up the contract appointment, by itself, is a resignation and would entail forfeiture of past service.

6. For the aforesaid reasons, the impugned decision of the Government cannot be found fault with.

In the result, the writ petition fails. The same is accordingly dismissed. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

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JUDGMENT

5th SEPTEMBER, 2007.

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